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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6477 of 2021

Smt. Sabita Das
Vs.
The Authorized Officer, Indian Bank & Ors.

Mr. Sanojit Kumar Ghosh,
Mr. Madhusudan Mukhopadhyay
... For the petitioner.

Mr. Dhiman Ray
... For the respondents no.1 and 2

Affidavit of service filed in Court today is taken on record.

At the outset, it is submitted by the advocate engaged by Indian Bank that Allahabad Bank has merged with the Indian Bank with effect from 1st April, 2020 and, as such, there is no independent existence of Allahabad Bank at the present. The authorized officer, Allahabad Bank, should be substituted by the authorized officer, Indian Bank and the Branch Manager, Allahabad Bank, Jhalijhalia Branch, Malda, being the respondent no.2 should be substituted by the Branch Manager, Indian Bank, Jhalijhalia Branch.

The petitioner is granted leave to amend the cause title by incorporating Indian Bank in place of Allahabad Bank in the cause title as against respondents no. 1 and 2.

The petitioner says that the petitioner's property had been sold in auction sometime in December, 2014, in terms of the notice of sale dated 17th October, 2014, at a grossly low value. The petitioner challenged the auction notice by filing an appeal before the Debts Recovery Tribunal under the provisions of section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, SARFAESI). The said appeal was ultimately dismissed for default. The petitioner had moved the Appellate Tribunal against the order of dismissal seeking restoration but the same was dismissed. The petitioner has filed the present writ petition on 3rd March, 2021 challenging the action on the part of the bank after a lapse of six years upon being unsuccessful in getting her appeal restored. The petitioner says that the bank had valued the property at the time of granting loan to the petitioner. The bank did not adhere to such valuation at the time of sale. On the contrary got a fresh valuation at a much reduced rate and invited offers on such basis. The sale was conducted on such basis. The petitioner has relied upon a judgment delivered by a learned Single Judge of the High Court of Kerala on 9th February, 2018 in **WP (C) No.1030 of 2018 (K. T. Unnikrishnan vs. Authorized Officer,**

UCO Bank & Ors.) to emphasize that this Court in exercise of its writ jurisdiction should interfere in the illegal and unauthorized acts of the bank to the extent of selling the petitioner's property at a grossly low value.

On behalf of bank it is submitted that the sale was made in December 2014 after observing all legal formalities consequent upon petitioner's failure to repay the loan. The petitioner has not only approached at a delayed stage but after being unsuccessful in her challenge before the Tribunal. That apart and in any event the position after the sale in 2014 has now become irreversible.

On perusing the judgment in Unnikrishnan (supra) it appears that the sale was conducted on 3rd November, 2017 and the judgment was delivered on 9th February, 2018 which presupposes that the sale conducted by the bank in that case was brought under the scrutiny of the Court within a short period from the date of sale. It also appears that the petitioner in Unnikrishnan (supra) had relied upon a registered deed of sale (Exhibit P-5) executed on 2nd November, 2017 in respect of a property situated in the very survey number measuring 4 cents.

The petitioner in Unnikrishnan (supra) also prayed for release of the property to be sold by the petitioner (in that case) to a person of his choice in terms of an agreement. The factual position in two cases are different and with the passage of time between the sale and petitioner's approach to this Court the ratio of Unnikrishanan (supra) cannot be applied in the instant case.

The challenge to a valuation is dependent on several factual parameters, which has been also considered and approved in Unnikrishnan (supra). The writ Court in the absence of undisputed facts cannot exercise its jurisdiction. In the instant case, there is a long delay by the petitioner in approaching the writ Court. The sale was conducted in December, 2014 and the petitioner has approached this Court in March, 2021. The petitioner, in the meantime persuaded her remedy under section 17 the SARFAESI Act as also in appeal before the Tribunal. The Debts Recovery Tribunal is a fact finding Court and the petitioner's case could have been more effectively be gone into so far as the valuation aspect is concerned than by this Court in exercise of writ jurisdiction. That apart and in any event, there is no materials on record like that in Unnikrishnan (supra) to substantiate the asset was admittedly under valued at the time of sale.

The writ petition, therefor, fails and is dismissed. Since the petitioner's appeal was dismissed for default and the approach to Tribunal for restoration thereof is unsuccessful no further opportunity before the Tribunal is unwarranted.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)